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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 233

RUFUS HOWARD NYE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion in the circuit court of appeals (R. 144–149)[1] is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on July 22, 1943 (R. 150). The

[1] The reference "R" is to the printed appendix to the brief of appellant filed in the court below and copies of which have been filed with the Clerk of this Court. The references "1 Tr.," "2 Tr.," or "3 Tr." are to the volumes of certified transcript of testimony which have also been filed with the Clerk (R. 151–152).

petition for a writ of certiorari was filed on August 6, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether an indictment charging petitioner with obstructing justice in that he procured the dismissal of a civil action through the filing of "false and fraudulently obtained letters and affidavits" is defective because it failed to specify the letters and affidavits and to allege that the petitioner knew them to be false; or, in the alternative, whether the trial court erred in refusing to compel the prosecutor to furnish a bill of particulars.

2. Whether the Government was required to allege and prove that the court in which the civil action was pending had jurisdiction to try that action.

STATUTE INVOLVED

The pertinent portion of Section 135 of the Criminal Code (Act of March 4, 1909, c. 321 § 135, 35 Stat. 1113, 18 U. S. C. 241) reads:

> Whoever * * * corruptly or by threats or force, or by any threatening letter or communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than $1,000, or imprisoned not more than one year, or both.

STATEMENT

Petitioner was charged in a two-count indictment (R. 1–6) with (1) unlawful conspiracy corruptly to influence, obstruct, and impede, the due administration of justice, and (2) corruptly influencing, obstructing, and impeding, the due administration of justice in violation of Section 135 of the Criminal Code, 18 U. S. C. 241, *supra.* He was acquitted of the conspiracy charge, found guilty of the substantive offense and sentenced to imprisonment for six months and payment of a fine of $500 (R. 140). Upon appeal the judgment was unanimously affirmed (R. 144–149). The facts founding petitioner's conviction were reviewed by this Court in *Nye* v. *United States,* 313 U. S. 33, 39–40 (see also, 113 F. (2d) 1006, 1007–1008), and need not here be repeated.[3]

[3] In brief, as the court below said, the jury was presented with evidence showing "the pendency of an action for damages brought by one Elmore as administrator, the undue influence by use of liquor and otherwise to over-reach Elmore and take advantage of him, and the obtaining from Elmore by these means of letters and affidavits, which were used in an effort to secure a dismissal of the case and which resulted in delays and obstructions to the due administration of justice" (R. 145; 15–16, 18–24, 69–70, 88–94). Petitioner's interest in the pending civil action resulted from the marriage of his daughter to the son of one of the parties defendant in the civil action (2 Tr. 442, 443, 448). No serious challenge is made to the sufficiency of the evidence supporting the conviction, and therefore we deem it unnecessary to delineate the proof adduced at the trial.

ARGUMENT

I

The circuit court of appeals correctly held (R. 146–147) that since the indictment contains a general charge in the language of the statute which sets forth the essential elements of the offense "with sufficient definiteness and certainty to apprise the defendant of the crime charged and to protect him against further prosecution for the same offense" it is therefore sufficient. Cf. *United States* v. *Lepowitch,* 318 U. S. 702, 704; *Potter* v. *United States,* 155 U. S. 438, 444; *Hagner* v. *United States,* 285 U. S. 427, 431. Accordingly, it was unnecessary for the pleader also to allege the means used, and petitioner's complaint that the indictment is defective because it fails to specify the letters, affidavits and contents thereof, and the names of the authors and affiants (Pet. 12), is meritless. "Such specificity of detail falls rather within the scope of a bill of particulars." *Glasser* v. *United States,* 315 U. S. 60, 66; *United States* v. *Polakoff,* 112 F. (2d) 888, 890 (C. C. A. 2), certiorari denied, 311 U. S. 653. Furthermore, it is settled that only in cases of forgery, counterfeiting and similar offenses is it necessary fully to set forth the documents referred to by the indictment. *Becher* v. *United States,* 5 F. (2d) 45, 49 (C. C. A. 2); *United States* v. *Winslow,* 195 Fed. 578, 582

(D. Mass.); *Pooler* v. *United States,* 127 Fed. 509, 517–518 (C. C. A. 1).[4]

Nor is there any merit in petitioner's claim (Pet. 7–8, 13) that the trial court erred in denying his motion for a bill of particulars (1 Tr. 6–7, R. 10–12). It is well settled, as the court below noted (R. 148), that "the application for the bill of particulars was one addressed to the sound discretion of the court, and, there being no abuse of this discretion, its action thereon should not be disturbed." *Wong Tai* v. *United States,* 273 U. S. 77, 82; see also *Dunlop* v. *United States,* 165 U. S. 486, 491; *Rosen* v. *United States,* 161 U. S. 29, 35, 40; *Bedell* v. *United States,* 78 F. (2d) 358, 362 (C. C. A. 8), certiorari denied, 296 U. S. 628. If petitioner could possibly have been in doubt as to these letters and affidavits in question after the prior proceedings against him (see *Nye* v. *United States,* 313 U. S. 33), such doubt must have been dispelled by the information supplied by a letter of the Assistant United States Attorney responding to petitioner's motion for a bill of particulars (R. 12–14). That letter, which under order of the trial court was attached to the motion for the bill of particulars

[4] Similarly, petitioner's complaint that indictment fails to allege that he knew the letters and affidavits were false (Pet. 12) overlooks the allegation that petitioner "unlawfully, wilfully, knowingly and feloniously, did corruptly influence, obstruct and impede," the administration of justice (R. 6). See *Astwood* v. *United States,* 1 F. (2d) 639, 641–642 (C. C. A. 8), and cases there cited.

and filed as an exhibit (1 Tr. 6–7), identifies the documents in question as those described with great particularity among the overt acts set forth in the first count of the bill of indictment (see R. 3–5), and further designates the documents as the subjects of testimony in the prior contempt proceedings (R. 13–14). It appears that this letter generally supplied the information requested and that petitioner, so regarding it, asked that the letter be filed as an exhibit in order to delimit the area of the Government's proof (1 Tr. 5–7). Certainly petitioner, knowing in advance what proofs the Government would rely on, could not have been prejudiced by the trial court's denial of his motion.[5] And there is nothing in the record indicating that the petitioner was taken by surprise in the progress of the trial, or that his substantial rights were prejudiced in any way by the refusal to require a bill of particulars. *Wong Tai* v. *United States,* 273 U. S. at p. 82.

II

Petitioner also seeks reversal upon the ground that the Government failed to allege or prove that the District Court of the United States for the Middle District of North Carolina had jurisdiction in the civil action the course of which

[5] It has been held that where a bill of particulars "could only have been a repetition of the facts which had already been testified to in the presence of the defendant [at an earlier trial]" the request for the bill was properly denied. *Ciafardini* v. *United States*, 266 Fed. 471, 473–474 (C. C. A. 4), certiorari denied, 254 U. S. 634.

petitioner unlawfully influenced (Pet. 12–13). But as the court below said in disposing of this contention, "This was a prosecution for obstructing justice, not a jurisdictional inquiry nor a prosecution for false pretense. * * * one who corruptly obstructs or impedes the processes of justice may not escape the consequences of his conduct by showing that the court should have declined jurisdiction of the action with which he corruptly interfered." (R. 148, 149). See also *Davey* v. *United States,* 208 Fed. 237, 240 (C. C. A. 7), certiorari denied, 231 U. S. 747; *United States* v. *Perlstein,* 126 F. (24) 789, 796 (C. C. A. 3), certiorari denied, 316 U. S. 678.

Pettibone v. *United States,* 148 U. S. 197, upon which petitioner relies (Pet. 6, 16) furnishes no support for his position. That case turned on defendant's absence of notice or knowledge of the pendency of the federal civil proceeding, a matter specifically alleged by the indictment in the instant case (R. 6), and admitted by petitioner in the course of trial, e. g., R. 75–76, 78–79. More specifically, the evidence here shows that Elmore had been appointed administrator of his son (R. 15), that he instituted the civil action in the federal court in his capacity as administrator (R. 15–16, 3 Tr. 47–48), and that the suit was still pending at the time when petitioner attempted to secure its dismissal by the "highly reprehensible"[6] conduct of which he was convicted (see R.

[6] See *Nye* v. *United States,* 313 U. S. at p. 52.

149, 3 Tr. 72–82). It would seem apparent that petitioner cannot escape liability for his interference with the due administration of justice by the fortuity that the court may have been without jurisdiction over the civil action (see Pet. 8). Petitioner nowhere ascribes to the statute the legislative intent to punish only such persons endeavoring to influence the due administration of justice who might be adversely affected by the outcome of justice's due administration.[7] The statute, referred to as "one of the most important laws ever adopted" is designed to "prevent a miscarriage of Justice by corrupt methods." *Samples* v. *United States,* 121 F. (2d) 263, 265 (C. C. A. 5), certiorari denied, 314 U. S. 662. The civil action which petitioner endeavored to influence might in due course have been dismissed for want of jurisdiction or for want of merit, but Congress

[7] On June 10, 1872, Congress passed "An Act to prevent and punish the Obstruction of the Administration of Justice in the Courts of the United States," 17 Stat. 378. This act became R. S. Section 5404, consolidated with R. S. Section 5399, Act of March 2, 1831, 4 Stat. 488, to form section 135 of the Criminal Code, 35 Stat. 1113, 18 U. S. C. 241. In House debate on the 1872 bill Congressman Peters, steering the bill, stated, "The United States courts have no common law jurisdiction. This bill is intended to confer upon them the same jurisdiction in regard to this offense that other courts have." See *Debates in House of Representatives*, 2nd Sess., 42nd Cong., June 7, 1872, *Congressional Globe*, p. 4319. At common law, indictments to obstruct justice were sustainable despite the fact that no judicial proceeding was pending. *Taylor's and Robinson's Case*, 2 East P. C. 1010, 1 Leach 37. See *United States* v. *Perlstein*, 126 F. (2d) 789, 795–796, note 3 (C. C. A. 3).

did not condition responsibility for intrusion into the orderly determinations of the judicial process upon the nature of the determination. Concededly obstruction "can only arise when justice is being administered," *Pettibone* v. *United States,* 148 U. S. at 207, but it is the very obstruction to the administration of justice which the statute condemns, and nothing in the statute creates a basis for exemption from responsibility for obstruction. "The acts intended to be made criminal * * * are, as we think, not forbidden merely on the ground that such acts will of necessity prevent a fair trial, but on the ground that such acts may prevent such trial," *Wilder* v. *United States,* 143 Fed. 433, 441 (C. C. A. 4), certiorari denied, 204 U. S. 674.

CONCLUSION

The case was correctly decided below, there is no conflict of decisions, and no question of general importance is involved. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1943.

U. S. GOVERNMENT PRINTING OFFICE: 1943